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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CROWLEY MARINE SERVICES, INC.,

CV '10 - 617 NO -
Case No.

Plaintiff,

COMPLAINT IN ADMIRALTY

v.

ROBERT THINNES,

**Declaratory Relief Pursuant to 28 U.S.C.
§2201**

Defendant.

For its Complaint, plaintiff Crowley Marine Services, Inc. (hereinafter "Crowley") alleges as follows:

JURISDICTION AND VENUE

1.

Jurisdiction exists pursuant to 28 U.S.C. §1333.

2.

Venue lies in this court because this court has personal jurisdiction over defendant.

PARTIES

3.

Plaintiff Crowley is a foreign business corporation registered in Delaware with its principal place of business in Jacksonville, Florida.

#33751

4.

At all material times, defendant Robert Thinnnes was a seaman employed by Crowley to do work aboard its vessels and was a resident of Oregon.

Claim for Relief

5.

Mr. Thinnnes claims to have injured his back while working aboard Crowley's tug NAVIGATOR in April 2007.

6.

Once informed of Mr. Thinnnes' claim, Crowley promptly began to pay plaintiff the maintenance and cure benefits to which he was entitled for his back strain pursuant to maritime law.

7.

Regardless of fault, Crowley is obligated to pay maintenance and cure benefits if an employed seaman falls ill or is injured while in the service of the vessel. "Maintenance" is a living allowance paid on a per diem basis and is meant to cover the seaman's food and lodging. "Cure" is intended to cover the seaman's medical expenses resulting from the injury. Cure payments are only required for treatment which is "curative" rather than "palliative." Payments for maintenance and cure are necessary until the seaman reaches the point of "maximum medical improvement" from the work-related illness or injury.

8.

Mr. Thinnnes' primary treating doctor recently confirmed that on or about December 22, 2009 Mr. Thinnnes reached the point of maximum medical improvement from his work-related back strain.

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9.

Mr. Thennes and Crowley, through respective counsel, have engaged in settlement negotiations regarding potential Jones Act negligence and unseaworthiness claims. Mr. Thennes' counsel presented a draft complaint which also includes a claim for punitive damages for failure to pay cure benefits. *See Exhibit A* attached hereto.

10.

Crowley has paid all medical bills received to date regarding Mr. Thennes' work-related back strain and continues to advance maintenance benefits as a courtesy to Mr. Thennes despite his having reached maximum medical improvement on December 22, 2009.

11.

Mr. Thennes contends that Crowley owes him cure benefits for bilateral total hip replacements alleging an aggravation of his hips when his back was strained on the job in April 2007. Crowley denies that it owes any maintenance and cure obligation with regard to Mr. Thennes' hips.

12.

Based on the foregoing, a judiciable controversy exists between Crowley and Mr. Thennes and Crowley is entitled to a declaration that it does not owe Mr. Thennes any maintenance and cure benefits beyond the date of maximum medical improvement on December 22, 2009.

13.

Crowley is entitled to reimbursement for all maintenance benefits paid to Mr. Thennes after December 22, 2009, the point at which his treating doctor determined he reached maximum medical improvement.

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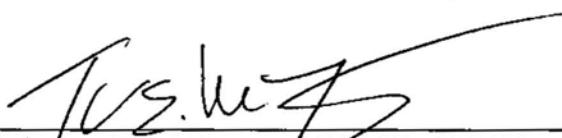
14.

Crowley brings this action seeking the entry of a declaratory judgment that Mr. Thennes reached maximum medical improvement on December 22, 2009 and that Crowley is legally entitled to terminate all maintenance and cure benefits and also to seek reimbursement from Mr. Thennes for all maintenance benefits paid after December 22, 2009.

WHEREFORE, plaintiff Crowley Marine Services prays for judgment declaring that its maintenance and cure obligations to Mr. Thennes have been satisfied and that it is entitled to reimbursement for all maintenance and benefits paid to Mr. Thennes after December 22, 2009.

Dated this 1 day of June, 2010.

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By: 

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6 ROBERT THINNES,)
7 Plaintiff,) Case No.
8 v.)
9 CROWLEY MARINE SERVICES, INC.) COMPLAINT – JONES ACT
10 Defendant.) NEGLIGENCE (46 USC §30104(a)),
11) UNSEAWORTHINESS, and BREACH
) OF THE DUTY TO PROVIDE CURE
) (NOT SUBJECT TO MANDATORY
) ARBITRATION)
) REQUEST FOR JURY TRIAL

General Allegations

14 1

15 At all times material, defendant, Crowley Marine Services was a Foreign Business
16 Corporation registered to do business in the State of Oregon and was the owner of vessels operating
17 upon the navigable waters of the United States, including the Tug Navigator.

10 2

20 At all times material, plaintiff was employed by defendant as a seaman and member of the
21 crew of defendant's vessels

22 3

23 On or about April 12, 2007, plaintiff was assisting a master mechanic that defendant had
24 hired to perform clutch inspections. In the process of assisting with the removal of the heavy clutch
25 shrouds, claimant injured his lower back. After several days of rest, claimant returned to performing
26

PAGE 1 - COMPLAINT - JONES ACT NEGLIGENCE, UNSEAWORTHINESS,
AND REQUEST FOR JURY TRIAL.

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Exhibit A
Page 1 of 5

1 duties aboard the Tug for the remainder of that voyage but experienced ongoing pain and spasming
2 of both his lower back and hip. Because employer had recently reduced the number of crew
3 members on the tug, plaintiff needed to work on deck much more than had previously been
4 necessary.
5

6 **FIRST CLAIM FOR RELIEF –
7 JONES ACT NEGLIGENCE**

8 4.

9 Plaintiff incorporates the allegations of paragraphs 1-3 above.

10 5.

11 At the time and aboard the vessel described above, defendant, through its agents and
12 employees, was negligent in one or more of the following particulars:

13 a. Failing to provide mechanical assistance for the moving and lifting of the heavy
14 clutch shrouds;

15 b. Hiring a master mechanic and crew who conducted the clutch inspection operation
16 without adequate safety procedures, including safety equipment for heavy lifting ; and

17 c. Undermanning of the vessel.

18 6.

19 As a result of defendant's negligence, plaintiff suffered a strain of his low back and
20 aggravation of preexisting conditions of his back and hips, which have required two hip replacement
21 surgeries and a need for future medical care and have caused plaintiff to incur medical expenses, lost
22 wages and loss of earning capacity, all to plaintiff's economic damage in the amount of \$.
23

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PAGE 2 - COMPLAINT - JONES ACT NEGLIGENCE, UNSEAWORTHINESS,
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Exhibit A
Page 2 of 5

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7.

2

As a further result of defendant's negligence, plaintiff has and will experience pain, discomfort, distress, loss of enjoyment and interference with usual activities apart from work, all to his non-economic damages in the amount in the amount of \$.

5

**SECOND CLAIM FOR RELIEF -
UNSEAWORTHINESS**

7

8.

9

Plaintiff incorporates the allegations of paragraphs 1-3 above.

10

9.

11

At all material times, the Tug Navigator was unseaworthy in one or more of the following ways:

13

a. No mechanical assistance was available to help seamen with lifting of the heavy clutch shrouds;

16

b. The vessel retained a master mechanic and crew to conduct the clutch inspection operation who were not adequately prepared and/or trained in adequate safe lifting procedures; and

19

c. The vessel was not adequately manned.

20

10.

21

As a result of the unseaworthiness of defendant's vessel, plaintiff suffered a strain of his low back and aggravation of preexisting conditions of his back and hips, which have required two hip replacement surgeries and a need for future medical care and have caused plaintiff to incur medical

25

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**PAGE 3 - COMPLAINT - JONES ACT NEGLIGENCE, UNSEAWORTHINESS,
AND REQUEST FOR JURY TRIAL**

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**Exhibit A
Page 3 of 5**

1 expenses, lost wages and loss of earning capacity, all to plaintiff's economic damage in the amount
2 of \$.

3 11..

4 As a further result of the unseaworthiness of defendant's vessel, plaintiff has and will
5 experience pain, discomfort, distress, loss of enjoyment and interference with usual activities apart
6 from work, all to his non-economic damages in the amount in the amount of \$.

7

8 **THIRD CLAIM FOR RELIEF**
9 **BREACH OF THE DUTY TO PROVIDE CURE**

10 12.

11 Plaintiff incorporates the allegations of paragraphs 1-3 above.

12 13.

13 As a result of injuries sustained while employed by defendant aboard the Tug Navigator,
14 plaintiff sustained an aggravation of a preexisting hip condition that has required two hip
15 replacement surgeries and a need for future medical care.

16 17 14.

18 Defendant has refused to provide reasonable and necessary medical services for plaintiff's
19 hip condition.

20 21 15.

22 Defendant's breach of its duty to provide medical service was willful and wanton and
23 justifies an assessment of punitive damages against defendant.

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PAGE 4 - COMPLAINT - JONES ACT NEGLIGENCE, UNSEAWORTHINESS,
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Exhibit A
Page 4 of 5

1 WHEREFORE, plaintiff prays for economic damages in the amount of \$ and non-economic
2 damages in the amount of \$. Plaintiff reserves the right to move to amend this complaint to add a
3 claim for punitive damages.

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6 By _____
7 Peter W. Preston, OSB #82107
8 Meagan A. Flynn, OSB #92307
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PAGE 5 - COMPLAINT - JONES ACT NEGLIGENCE, UNSEAWORTHINESS,
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Exhibit A
Page 5 of 5